

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10408 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GAMBHIR DESAR BHATTI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR ND GOHIL, APP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/03/2000

ORAL JUDGEMENT

Heard the learned advocates. The petitioner challenges the order of preventive detention dated 19th November, 1999, made by the District Magistrate, Junagadh, under the powers conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of

Anti-social Activities Act, 1985 (hereinafter referred to as "the Act")

2. Along with the order of detention the petitioner has been served with the grounds of detention and the supporting materials. The grounds of detention suggest that some 5 prohibition offences have been registered against the petitioner and all are pending trial. In each of the said cases the petitioner was found to be in possession of the liquor wash and in some cases the country liquor also. Petitioner, is, therefore held to be a "bootlegger" within the meaning of Section 2 (b) of the Act and his activities are found to be prejudicial to the maintenance of public order within the meaning of Section 3(4) of the Act and the explanation thereto. Further, some 4 persons have given their statements in respect of the anti-social activities of the petitioner which adversely affect the public tranquility and the even tempo of life. The said witnesses had given statements on 11th August, 1999 and 13th August 1999 on assurance of anonymity. Two of the said persons were summoned before the detaining authority on 18th November, 1999 and the detaining authority had personally verified about the genuineness and correctness of the statement given by the witnesses and the apprehension of retaliation voiced by them. It is therefore considered to be in the interest of public not to disclose the identity of the said persons. The detaining authority, has therefore under the powers conferred by Section 9 (2) of the Act withheld the names and other details of the said four persons.

3. Be it noted that of the four persons whose statements have been relied upon by the detaining authority, only two had appeared before the detaining authority whose statements were verified by the detaining authority. As regards two other persons, their statements have not been verified by the detaining authority personally nor the detaining authority has recorded his personal satisfaction in respect of the genuineness of the statements and the apprehension of retaliation voiced by them. In absence of such satisfaction, the detaining authority could not have exercised the powers conferred by Section 9 (2) of the Act. The petitioner's right to make the representation has thus been seriously prejudiced. The action of the detaining authority is, therefore, violative of the provisions contained in Article 22 (5) of the Constitution of India. The continued detention of the petitioner is, therefore, null and void.

4. The petition is allowed. The impugned order dated 19th November, 1999 (Annexure "A" to the petition) is quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute. There shall be no order as to costs.

24-3-2000 (Ms.R.M.Doshit, J.)

*mithabhai